



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 09, 2022

IN THE MATTER OF:

Appeal Board No. 625535

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 625533, 625534 and 625535, the claimant appeals from the decisions of the Administrative Law Judge filed August 18, 2022, that sustained the initial determinations disqualifying the claimant from receiving benefits, effective August 18, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$6,656 in benefits recoverable pursuant to Labor Law § 597 (4), \$9,000 in Federal Pandemic Unemployment Compensation

(FPUC) recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$5,120 in Pandemic Emergency Unemployment Compensation (PEUC) recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$600 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$3,116.40 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearings, including remanded hearings, before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer.

The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as a stocker for this employer for over one year until August 17, 2020. She worked full-time approximately 40 hours per week. She was able to view her schedule three weeks in advance. Her supervisor completed the scheduling. She had inquired with management on prior occasions regarding her work schedule and was told to speak with the supervisor if she had questions or concerns. In June 2020, she was absent due to illness on several of her shifts. From July 15, 2020 through July 25, 2020 the claimant was removed from the schedule. When she returned to work, she was again scheduled full-time hours through August 16, 2020. When she viewed her schedule for the next three weeks after August 16, her hours were reduced from full time to 15-16 hours per week. When she complained about the reduction, her supervisor responded that she had to "prove" herself. Her supervisor also directed her not to complain to HR about it. The claimant voluntarily left her employment because her hours were reduced from full time to 15-16 per week.

When she filed her claim for benefits, she stated that her employment ended due to lack of work. She received \$5,120 in PEUC, \$9,000 in FPUC and \$600 in LWA benefits.

OPINION: The credible evidence establishes that the claimant voluntarily left her employment because her hours were reduced from full time to 15-16 per week. We accept the claimant's credible firsthand testimony over the employer's hearsay evidence that there were no cuts. We note that the employer did not produce the claimant's supervisor at the remand hearing. Hearsay evidence cannot prevail against credible sworn testimony when there is nothing in the record tending to impeach the sworn testimony (Matter of Perry, 37 AD2d 367 [3d Dept 1971]). As she complained to her supervisor, we find that she took adequate steps to preserve her employment. Further, as management had directed her to speak with her supervisor if she had concerns with her schedule, and as her supervisor directed her not to complain to HR, any failure on her part to complain to someone higher is excused. The reduction in the claimant's work schedule was a substantial change in the terms and conditions of the claimant's employment to her detriment (see Appeal Board No. 583362). We therefore conclude that the claimant voluntarily separated from her employment with good cause. It follows that the claimant was not overpaid the benefits at issue.

The credible evidence further establishes that the claimant stated that her

employment ended due to lack of work. As she left her employment due to the substantial reduction of her hours, we find that her statement was not unreasonable (see Appeal Board No. 558675). Accordingly, we further conclude that the claimant did not make a willful misrepresentation to obtain benefits.

DECISION: The decisions of the Administrative Law Judge are reversed.

In Appeal Board Nos. 625533, 625534 and 625535, the initial determinations, disqualifying the claimant from receiving benefits, effective August 18, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$6,656 in benefits recoverable pursuant to Labor Law § 597 (4), \$9,000 in Federal Pandemic

Unemployment Compensation (FPUC) recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$5,120 in Pandemic Emergency Unemployment Compensation (PEUC) recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$600 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$3,116.40 on the basis that the claimant made a willful misrepresentation to obtain benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER